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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. NICHOLAS ISAAC ADEGBULUGBE, Defendant and Appellant.	B267482 (Los Angeles County Super. Ct. No. VA136685)

APPEAL from an order of the Superior Court of Los Angeles County, Marcelita Haynes, Judge. Reversed.

Emily Lowther Brough, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior

Assistant Attorney General, Mary Sanchez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Nicholas Isaac Adegbulugbe (Adegbulugbe) pleaded nolo contendere to theft of access card information in violation Penal Code section 484e, subdivision (d).[1] The trial court denied his petition to have the offense reclassified as a misdemeanor under section 1170.18, enacted pursuant to Proposition 47. He appeals, and we reverse.

BACKGROUND

The limited record on appeal (the probation report) discloses the following: Adegbulugbe took a wallet from a purse left unattended in the break room of the company where he worked. On August 26, 2014, he used the victim's Target credit card to charge merchandise totaling $949.72 at two Target stores. Detectives identified Adegbulugbe on video surveillance tapes, and when they went to his residence and took him into custody, they recovered some of the merchandise.

A felony complaint filed September 4, 2014 charged Adegbulugbe with one felony count of theft of access card account information (§ 484e, subd. (d); count 1), one felony count of second degree commercial burglary (§ 459; count 2), and one misdemeanor count of theft of identifying information (§ 530.5, subd. (c)(1); count 3). On September 4,

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[1] All further statutory references are to the Penal Code.

2014, Adegbulugbe pleaded no contest to count 1, and the trial court dismissed counts 2 and 3. The trial court suspended his sentence and placed him on three years of formal probation.

At a probation violation hearing on August 24, 2015, Adegbulugbe orally petitioned for resentencing under section 1170.18, subdivision (a). He argued that because the credit card had been used to acquire merchandise under $950, his conviction under section 484e, subdivision (d) should be reduced to petty theft under section 490.2 and redesignated as a misdemeanor.

The trial court quoted section 484e, subdivision (d), which provides: "Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft." The court reasoned: " 'The focus of 484e is on obtaining the access card information with the intent to use it. There is no requirement that the goods be acquired.' " Section 484(e) subdivision (d) was therefore "different and treated differently than theft provisions." The court denied the petition. Adegbulugbe filed this timely appeal.

DISCUSSION

The California Supreme Court has granted review in the published decisions addressing (with conflicting results) whether grand theft under section 484e, subdivision (d) has been reclassified as a misdemeanor under the provisions

enacted by Proposition 47. We agree with prior decisions by Divisions Two, Four, and Eight of this District which concluded that reclassification under Proposition 47 applies to section 484, subdivision (d). (*People v. King* (2015) 242 Cal.App.4th 1312, review granted Feb. 24, 2016, S231888; *People v. Thompson* (2015) 243 Cal.App.4th 413, review granted Mar. 9, 2016, S232212; *People v. Romanowski* (2015) 242 Cal.App.4th 151, review granted Jan. 20, 2016, S231405.)

Proposition 47, approved by the electorate in November 2014, made certain theft offenses misdemeanors by enacting section 490.2, subdivision (a), which states: "Notwithstanding section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars . . . shall be considered petty theft and shall be punished as a misdemeanor," with exceptions not in issue here. Section 1170.18 creates a resentencing procedure for defendants whose offenses have been reclassified as misdemeanors. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092–1093.) We apply statutory construction principles to interpret a voter initiative such as Proposition 47, turning first to the language of the statute and giving words their ordinary meaning, and construing the language in the context of the statute as a whole and the electorate's intent. (*People v. Briceno* (2004) 34 Cal.4th 451, 459.) Section 490.2, subdivision (a) states plainly that it

applies to "any other provision of law defining grand theft." Section 484e, subdivision (d) is indisputably a law defining grand theft, providing that one who steals access card information with intent to use it fraudulently "is guilty of grand theft." The statute does not require that the defendant use the access card information to purchase merchandise. Regardless of whether the defendant has taken only the card, with its minimal value, or has used the card to take property worth less than $950, the crime falls under the definition of grand theft.

"[T]he express intent of Proposition 47 is to 'reduce[ ] penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes.' " (*People v. Acosta* (2015) 242 Cal.App.4th 521, 526, italics omitted.) A related purpose was " 'to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs.' " (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 928.) Section 490.2, subdivision (a) specifically reclassifies any provision of law defining grand theft, such as section 484e subdivision (d), as a misdemeanor where (as in this case), the value of the property taken is less than $950. We honor the plain language of the statute and the intent of the electorate in concluding that Adegbulugbe's conviction was eligible for reduction to a misdemeanor. The trial court was required to grant his petition.

DISPOSITION

The order is reversed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.